IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 618 OF 2005

Sukhraj Sagarmal Jain. ... Petitioner

Versus.

The State of Maharashtra & ors. ... Respondents.

Shri Chaurasia i/by Shri A.M.Saraogi for the Petitioner.

Ms.M.M.Deshmukh, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 12th July, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The petition is by the original Complainant who claims to be the owner of a jewellery shop. There was a theft in the jewellery shop in September 1999. The Respondents Nos.2 and 3 were the accused. By a judgment and order dated 27th February 2003 the learned Metropolitan Magistrate, 17th Court, Mazgaon, acquitted the Respondents Nos.2 and 3 of the offences alleged against them. While passing the order of acquittal, the learned Magistrate passed the following order as regards muddemal property:

> . "The muddemal property i.e. a gold ingot (Article A) and 4 gold ingots (Article B collectively) weighing 300 gms, and 998.100 gms. respectively, in the safe custody of the

police, stands confiscated to State and be sent to Government Mint, after the expiry of appeal period."

In appeal preferred by the Petitioner the said order has been confirmed.

2. The learned Counsel appearing for the Petitioner submitted that the Respondents Nos.2 and 3 have not claimed the property, namely the gold ingots (Articles A & B) as their ownership. He, therefore, submitted that the property must come back to the Petitioner. He submitted that the evidence on record shows that the same property is the subject matter of theft from the shop of the Petitioner.

3. The learned A.P.P. supported the impugned Judgments and orders.

4. According to the case of the Petitioner gold ornaments weighing about 10 kgs. and silver ornaments weighing about 5 kgs. were stolen from his shop. After consideration of the evidence on record, the learned Magistrate observed that what has been recovered is gold ingots (Articles A & B) and not gold and silver ornaments. The learned Magistrate held that it is not established that the property recovered was the subject matter of theft. After considering the evidence on

record, the learned Additional Sessions Judge confirmed the findings of the learned Magistrate.

5. The notes of evidence in the trial are on record. After going through the Notes of evidence I find no fault with the reasoning of the learned Magistrate. There is no material on record to show that the gold ingots which are recovered are prepared from the ornaments allegedly stolen from the shop of the Petitioner. There is no evidence on record to indicate that Articles A and B were the subject matter of theft from the shop of the Petitioner.

6. In the circumstances no fault can be found with the approach of the Courts below. Petition is dismissed.

Judge.